

charges.¹ (Id. at 2). Nineteen years later, on November 13, 2019, Defendant filed the present motion, requesting this Court to make a non-binding recommendation to the BOP that his federal sentence run concurrently with the later-imposed state sentence. (Doc. No. 99). Defendant was released from federal custody less than a month later, and he was then transferred to state custody in Virginia. See (Doc. No. 101). This Court ordered the Government to respond to the motion, and the Government responded in opposition to the motion by filing its own motion to dismiss Defendant's motion. (Doc. No. 108).

II. DISCUSSION

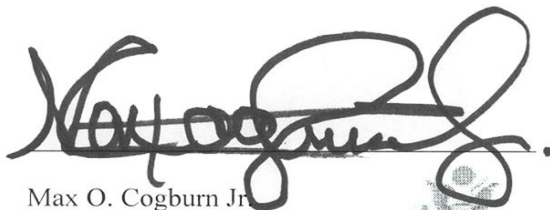
It is not clear under what authority Defendant seeks a recommendation from this Court. Pursuant to 18 U.S.C. § 3584(a), a district court may, at the time of sentencing, impose a sentence to run concurrently or consecutively as to any anticipated state sentence. However, “it is always more respectful of the State’s sovereignty for the district court to make its decision up front rather than for the Bureau of Prisons to make the decision after the state court has acted.” Setser v. United States, 566 U.S. 231, 241 (2012). Regardless, because Defendant is no longer in BOP custody, any recommendation to the BOP would be moot. Accordingly, Defendant’s motion is dismissed as moot.²

¹ The Government notes that, although Defendant does not include the state court judgment, it appears from the detainer information in his BOP records that the state court sentence was to run consecutively to his federal sentence. (Doc. No. 99 at 7–8).

² Furthermore, as the Government notes, even if Defendant were still in BOP custody, this Court lacks the authority to recommend that he serve his state and federal sentences concurrently. Due to the statutory requirement in 18 U.S.C. § 924(c) that no term of imprisonment imposed for such an offense run concurrently with “any other term of imprisonment,” the sentences for Defendant’s Section 924(c) offenses cannot run concurrently with his state sentence. See United States v. Gonzales, 520 U.S. 1, 11 (1997).

IT IS THEREFORE ORDERED that Defendant's "Pro Se Emergency Motion for Judicial Recommendation," is **DISMISSED** as moot (Doc. No. 99), and the Government's Motion to Dismiss, (Doc. No. 108), is **GRANTED**.

Signed: January 9, 2021



Max O. Cogburn Jr.
United States District Judge